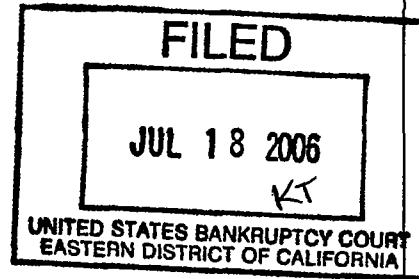


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6 UNITED STATES BANKRUPTCY COURT  
7 EASTERN DISTRICT OF CALIFORNIA

8 In re Case No. 05-15853-A-7K  
9 ARIE LEE HAYES KDG-2

10 Debtor. / FINDINGS OF FACT AND  
11 CONCLUSIONS OF LAW REGARDING  
TRUSTEE'S OBJECTION TO  
AMENDED CLAIM OF EXEMPTION

12 The evidentiary hearing on the objection by the chapter 7  
13 trustee to the debtor's amended claim of exemptions concluded on  
14 April 27, 2006. Following the hearing, the court took the matter  
15 under submission. This memorandum contains findings of fact and  
16 conclusions of law required by Federal Rule of Bankruptcy  
17 Procedure 7052 and Federal Rule of Civil Procedure 52. This is a  
18 core proceeding as defined in 28 U.S.C. §157(b) (2) (B).

19 The Bankruptcy Case.

20 Arie Lee Hayes filed her chapter 7 petition on July 26,  
21 2005. In the Schedules of Assets and Liabilities filed with the  
22 petition, she scheduled as an asset her residence at 4704 Lookout  
23 Mountain Court, Bakersfield, California (the "Residence"). The  
24 schedules value the Residence at \$180,000, subject to a secured  
25 claim in the amount of \$157,387. The debtor claimed an exemption  
26 in the amount of \$50,000 on Schedule C.

27 The debtor's Statement of Financial Affairs filed with the  
28 petition stated that her sole source of income was from her

1 employment with the City of Delano. Schedule I stated that she  
2 was employed as a correctional officer with the City of Delano  
3 earning a monthly income of \$4,200.

4 The meeting of creditors was held August 26, 2005. The  
5 debtor affirmed to the trustee that the Schedules of Assets and  
6 Liabilities were accurate. She did not tell the trustee about  
7 any change of employment status or health status. The trustee  
8 concluded that the debtor had undervalued the Residence. The  
9 trustee believed that a sale of the Residence would likely yield  
10 about \$18,000 for the bankruptcy estate. Therefore, the Trustee  
11 filed a report that the case was an asset case and requested that  
12 creditors be notified to file claims.

13 In early October 2005, the debtor filed an amended Schedule  
14 C and an amended Schedule I. In the amended Schedule C, she  
15 asserted that she was entitled to an exemption of \$150,000 in the  
16 Residence pursuant to California Code of Civil Procedure  
17 § 704.730(a)(3). The debtor amended Schedule I to claim no  
18 income from employment. Instead she said she was disabled and  
19 that her disability income was \$2,076 per month.

20 On October 25, 2005, the Trustee timely filed an objection  
21 to the amended claim of exemption. At that time the Trustee had  
22 no information, because the debtor had given none, about the  
23 nature of the debtor's disability.

24 The debtor opposed the Trustee's objection to her claim of  
25 exemption and on November 16, 2005, filed her declaration in  
26 support of that opposition. The debtor testified that she did  
27 not become disabled until July 14, 2005, and was not disabled  
28 when she first consulted with a bankruptcy attorney. She signed

1 her bankruptcy papers on July 25, 2005, but at that time she had  
2 not yet received any disability pay. She stated that she was  
3 still disabled and had no idea when her disability would end. An  
4 exhibit to her declaration indicates that Ms. Hayes was pregnant  
5 with an estimated delivery date of January 17, 2006. The exhibit  
6 was signed by her physician, Wendy Crenshaw, M.D. According to  
7 Dr. Crenshaw, the disability began on July 14, 2005. The debtor  
8 concurred with that date.<sup>1</sup>

9       The Trustee requested an evidentiary hearing, which the  
10 debtor opposed. Therefore, after the hearing at which both  
11 parties argued on December 13, 2005, the court initially took  
12 this matter under submission. At that time, the debtor's counsel  
13 argued that the disability the debtor was claiming was disability  
14 because of her pregnancy.

15       However, on January 12, 2006, the debtor filed an ex parte  
16 motion to reopen the proceeding for additional testimony. She  
17 stated, through her attorney, that "the debtor failed to disclose  
18 that in addition to being pregnant, with complications, she has  
19 several tumors that will require treatment by surgery or  
20 chemotherapy." Ms. Hayes had not authorized her attorney to  
21 disclose this to the court because she thought her tumors were a

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22  
23       <sup>1</sup>Both the opposition and the declaration in support of the  
24 opposition contain language that the court will strike. The  
25 opposition refers to the Trustee and her counsel as committing  
26 perjury and making "reckless, malicious and demeaning  
27 assertions." The declaration of Ms. Hayes implies that "members  
28 of a certain racial group" have greater problems with  
bankruptcies in the Bakersfield area. Neither of these  
assertions are supported by any evidence. Both are unsupported  
and irrelevant personal attacks. The court will strike this  
language.

1 private matter. However, because the attorney for the Trustee  
2 had subpoenaed her medical records, she concluded there was no  
3 reason not to disclose the personal information.

4 The court granted the debtor's motion to reopen, and an  
5 evidentiary hearing was held initially on March 23, 2006, and  
6 concluded on April 27, 2006. At the hearing, the court heard  
7 testimony from Arie Lee Hayes; Rosanne Z. Blanco, the chapter  
8 Trustee; and Wendy Crenshaw, M.D. Documentary evidence was  
9 admitted.

10 Background Facts.

11 Arie Lee Hayes was pregnant when she filed her chapter 7  
12 case. She testified that she did not state this in her initial  
13 bankruptcy papers because she did not start receiving California  
14 state disability benefits until July 26, 2005, right after she  
15 filed the petition. Dr. Crenshaw concurred that the date of  
16 disability was no later than July 14, 2005.

17 Prior to her pregnancy, Ms. Hayes had fibroid tumors which  
18 had been removed in a myomectomy in 2004. The fibroid tumors  
19 were benign.

20 In June 2005, after she became pregnant, Ms. Hayes was on  
21 light duty at her workplace. Later, by at least July 14, 2005,  
22 Dr. Crenshaw recommended that Ms. Hayes stop working because of  
23 the enlarging fibroids which were a risk factor for preterm  
24 labor. According to Dr. Crenshaw, the disabling condition that  
25 caused her to recommend Ms. Hayes stop working and be put on bed  
26 rest was the pregnancy and nothing else. Dr. Crenshaw explained  
27 that the fibroids were a complication of the pregnancy. Because  
28 Ms. Hayes had been put on bed rest, she was in no jeopardy, and

1 there were no postpartum complications. Ms. Hayes delivered her  
2 child by cesarean section on January 11, 2006. She had the  
3 cesarean section because of the prior myomectomy. The prior  
4 surgery, not a new complication, caused the cesarean section.

5 As of February 21, 2006, Ms. Hayes was doing well except for  
6 an enlarged uterus and was told by her physician that she could  
7 return to work in three weeks. Dr. Crenshaw saw Ms. Hayes on  
8 February 21, 2006. She did not observe any physical problems and  
9 cleared her to return to work. According to Dr. Crenshaw, there  
10 were no complications during pregnancy or delivery.

11 Dr. Crenshaw also testified that although Ms. Hayes still  
12 has fibroid tumors, they would not preclude her from engaging in  
13 her work with the City of Delano.

14 When Ms. Hayes was pregnant, she had pain and was worried  
15 about having a miscarriage. She now intends to go back to work  
16 once she decides what to do about the tumors. Ms. Hayes thinks  
17 the tumors do prevent her from doing the work she trained for.  
18 She still thinks she is disabled because of the tumors.

19 Applicable Law.

20 The Exemption Statute.

21 Ms. Hayes claims an exemption under California Code of Civil  
22 Procedure § 704.730(a)(3). That section allows an increased  
23 homestead exemption (\$150,000) to a person who is:

24 "physically or mentally disabled and as a result of that  
25 disability is unable to engage in substantial gainful  
employment. There is a rebuttable presumption affecting the  
26 burden of proof that a person receiving disability insurance  
benefit payments under Title II or supplemental security  
income payments under Title XVI of the federal Social  
27 Security Act satisfies the requirements of this paragraph as  
28 to his or her inability to engage in substantial gainful  
employment."

1       First, the debtor must have a physical or mental disability.  
2 Second, as a result of that disability, the debtor must be unable  
3 to engage in substantial gainful employment. See, In re Rostler,  
4 169 B.R. 408, 411 (Bankr. C.D. Cal. 1994).

5       Bankruptcy Code § 522(b) (1)<sup>2</sup> provides individual debtors  
6 with a choice between federal and state exemption systems unless  
7 debtor's state prohibits debtors from electing federal  
8 exemptions. California does prohibit its citizens from claiming  
9 exemptions under § 522(d).

10      Instead, California has established its own exemption  
11 system. In California, a debtor may elect a set of exemptions  
12 designed especially for bankruptcy or may elect the general  
13 California exemptions from enforcement of money judgment. See,  
14 California Code of Civil Procedure § 703.140(a). In re Rostler,  
15 supra, at 410-411. When a debtor elects the exemptions at  
16 § 704.730(a), the debtor must be eligible to claim that  
17 exemption as of the date of the petition. Id., at 411.

18      The Burden of Proof.

19      Federal Rule of Bankruptcy Procedure 4003(c) states that:

20      "In any hearing under this rule, the objecting party has the  
21 burden of proving that the exemptions are not properly  
claimed."

22      Several reported decisions have addressed the meaning of  
23 this rule. The Ninth Circuit considered the question in In re  
24 Carter, 182 F.3d 1027, 1029 (9<sup>th</sup> Cir. 1999). The Ninth Circuit

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27      <sup>2</sup>This case was filed before the effective date of the  
28 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005  
("BAPCPA"). Therefore, all citations herein are to the pre-  
BAPCPA Code.

1 stated:

2 "A claimed exemption is 'presumptively valid.' 9 Collier on  
3 Bankruptcy ¶ 4003.04 (15<sup>th</sup> ed. rev. 1998); In re Patterson,  
4 128 B.R. 737, 740 (Bankr. W.D. Tex. 1991). Carter claimed  
5 \$39,000 as an exemption under CCP § 704.070, and this claim  
6 is presumptively valid. Once an exemption has been claimed,  
7 it is the objecting party's burden (the trustee in this  
8 case) to prove that the exemption is not properly claimed.  
9 See Fed. R. Bankr. P. 4003(c). Initially this means that  
10 the objecting party has the burden of production and the  
11 burden of persuasion. The objecting party must produce  
evidence to rebut the presumptively valid exemption. In re Lester, 141 B.R. 157, 161 (S.D. Ohio 1991). If the  
objecting party can produce evidence to rebut the exemption,  
the burden of production then shifts to the debtor to come  
forward with unequivocal evidence to demonstrate that the  
exemption is proper. See In re Moneer, 188 B.R. 25, 28  
(Bankr. N.D. Ill. 1995); Fed. R. Evid. 301. The burden of  
persuasion, however, always remains with the objecting  
party."

12 In re Carter, at 1029, fn. 3.

13 In 1994, a bankruptcy court from the Southern District of  
14 New York explained the debtor's burden in more detail. In re de  
15 Kleinman, 172 B.R. 764 (Bankr. S.D. N.Y. 1994).

16 "Exempting property is not a game of hide and seek, . . .  
17 and the initial burden falls upon the debtor to  
18 particularize her exemptions in order to permit a trustee to  
ascertain, without any further substantial inquiry, those  
properties which a debtor believes to be exempt from  
distribution to creditors."

19  
20 Id. at 770 (internal quotations, italics and citations omitted).

21 Most recently, a concurring opinion in an exemption decision  
22 by the Ninth Circuit Bankruptcy Appellate Panel has called into  
23 question the continuing validity of Rule 4003(c). In re Davis,  
24 323 B.R. 732 (9<sup>th</sup> Cir. BAP 2005). Concurring in the majority  
25 opinion that the trustee had satisfied his burden of proof in his  
26 objection to the debtor's claim of exemption in retirement plans,  
27 Judge Klein opined that Rule 4003(c) likely holds a trustee to a  
28 higher burden of proof than necessary in certain circumstances.

1 "At least with respect to state-law exemptions, the better  
2 view, after the Supreme Court's decision in Raleigh v. Ill.  
3 Dep't of Revenue, 530 U.S. 15, 120 S.Ct. 1951, 147 L. Ed. 2d  
4 13 (2000), may be that, if challenged, the debtor has the  
5 burden to establish entitlement to a claim of exemption  
6 under state law by the same standard that applies in the  
7 courts of that state. If so, then the objecting party does  
8 not properly bear the burden of proof."

9  
10 In re Davis, supra, at 741.

11 According to Judge Klein, Rule 4003(c) is a procedural rule  
12 that attempts to accomplish a substantive task. After Raleigh,  
13 it is settled that a burden of proof in bankruptcy is a  
14 substantive matter. It generally is an essential element of a  
15 claim itself. Id. Therefore, state law exemptions in bankruptcy  
16 are probably subject to the burdens of proof that are prescribed  
17 by state law. Id. In California, the proponent of an exemption  
18 bears the burden of proof. Id.

19 This way of analyzing the burden of proof is particularly  
20 persuasive when considering § 704.730(3)(B). This is because  
21 that section itself describes that if a debtor is receiving  
22 benefits under the Social Security Act, she is entitled to a  
23 rebuttable presumption affecting the burden of proof that she is  
24 unable to engage in substantial gainful employment.

25 Assuming, however, that Rule 4003(c) is applicable, the  
26 trustee has the burden to prove that the debtor has not properly  
27 claimed her amended exemptions. Nonetheless, once challenged by  
28 the trustee's timely filed objection, the debtor has the burden  
to come forward with facts presenting a *prima facie* case that she  
is entitled under California law to the exemption that she has  
claimed. The ultimate burden of persuasion remains on the  
trustee.

1       Even without abrogating Rule 4003(c), there are good reasons  
2 for allocating to the debtor the burden to come forward with  
3 evidence establishing her prima facie entitlement to her amended  
4 claim of exemptions. The debtor has a unique access to the facts  
5 that she claims entitle her to the larger exemptions. Absent  
6 discovery, none of those facts are within the reach of the  
7 trustee. This is particularly true where, as here, the debtor  
8 did not disclose any of the facts that she claims entitle her to  
9 the larger exemption at the meeting of creditors or in the  
10 Schedules of Assets and Liabilities, even the amended Schedules  
11 of Assets and Liabilities.

12       The question then becomes whether the debtor has come  
13 forward with sufficient evidence to establish such a prima facie  
14 claim.

15 Discussion.

16       Are the requirements for claiming an increased homestead  
17 exemption because of disability present here? First, the debtor  
18 has established that she was pregnant on the date she filed her  
19 bankruptcy petition. As of that date, her doctor had recommended  
20 that she be on bed rest and cease working through her pregnancy.  
21 She was at that point eligible for disability payments from the  
22 State of California. Thus, her condition existed as of the date  
23 she filed her bankruptcy case. The question for decision is  
24 whether, as a result of that condition, Ms. Hayes was unable to  
25 engage in substantial gainful employment as a result of her  
26 pregnancy existing on the date of the bankruptcy petition, which

27

28

1 pregnancy was affected by her fibroids.<sup>3</sup>

2 Put another way, does inability to engage in substantial  
3 gainful employment imply that such inability is a continuing or  
4 permanent condition? The Trustee points out that the Social  
5 Security Act defines "disability," using language similar to that  
6 found at Cal. Code of Civil Procedure § 740.730 (a) (3) (B). Under  
7 Title II of the Social Security Act, § 223(d)(1) (42 U.S.C. §  
8 423(d)(1)), disability means:

9 "(A) inability to engage in any substantial gainful activity  
10 by reason of any medically determinable physical or mental  
11 impairment which can be expected to result in death or which  
has lasted or can be expected to last for a continuous  
period of not less than twelve months . . ."

12 On the other hand, the California statute under which the  
13 debtor received disability payments is less stringent. The  
14 California Unemployment Insurance Code defines disability at  
15 § 2626(a). That section states:

16 "(a) An individual shall be deemed disabled on any day in  
17 which, because of his or her physical or mental condition,  
he or she is unable to perform his or her regular or  
customary work.

18 (b) For purposes of this section, "disability" or "disabled"  
includes:

19 (1) illness or injury, whether physical or mental,  
including any illness or injury resulting from pregnancy,  
childbirth, or related medical condition."

20 Thus, under the California statute, disability is determined on a  
21 day by day basis. Disability includes illness or injury  
22 resulting from pregnancy related circumstances.

23  
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28 <sup>3</sup>Ms. Hayes is not entitled to the rebuttable presumption of  
§ 704.730(3)(B) because she is not receiving disability insurance  
benefits or supplemental security income payments under federal  
law.

1       On the date she filed her bankruptcy case, Arie Lee Hayes  
2 was pregnant. She was eligible for and did receive California  
3 disability payments because due to her pre-existing fibroids, her  
4 doctor recommended bed rest during her pregnancy. In January  
5 2006, Ms. Hayes delivered a healthy baby, and by February 21,  
6 2006, her doctor stated that there was no reason she could not  
7 return to her normal job duties.

8       The Trustee has met her burden of proof that the debtor's  
9 amended claim of exemption should be disallowed. The Trustee  
10 originally objected because without explanation the debtor  
11 amended her claim of exemptions to assert a claim of disability.  
12 In the face of that objection, the debtor came forward with facts  
13 indicating that she had been pregnant since before she filed her  
14 petition and that she was receiving temporary disability benefits  
15 under California law. Her doctor testified that at least as of  
16 February 21, 2006, Ms. Hayes was able to engage in substantial  
17 gainful employment - that is, she was able to go back to her  
18 regular job duties as a correctional officer for the City of  
19 Delano.

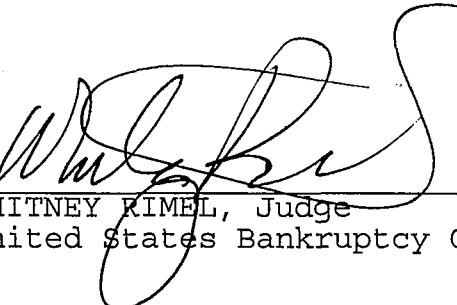
20       The phrase "unable to engage in substantial gainful  
21 employment" is best interpreted as requiring a condition that  
22 exists for a significant period of time. The reference in  
23 § 704.730(a)(3)(B) to rebuttable presumption that a person  
24 receiving disability insurance benefit payments under the Social  
25 Security Act is unable to engage in substantial gainful  
26 employment does provide guidance to the court. The Social  
27 Security Act definition of "disability" requires a condition that  
28 lasts for a continuous period of not less than twelve months.

1 See, In re Rostler, supra, at 412.

2 Arie Lee Hayes was pregnant when she filed her bankruptcy  
3 case. Her doctor recommended bed rest, and Ms. Hayes applied for  
4 and had become entitled to temporary disability benefits under  
5 California law by the time she filed her bankruptcy petition on  
6 July 26, 2005. By January 11, 2006, Ms. Hayes had delivered a  
7 healthy baby, and by February 21, 2006, her doctor stated that  
8 she was able to return to work and had no physical problems that  
9 would prevent her from working. Under all these circumstances,  
10 the court is unable to conclude that Ms. Hayes is entitled to a  
11 \$150,000 homestead exemption rather than the \$50,00 homestead  
12 exemption to which she would otherwise be entitled.

13 For the foregoing reasons, the trustee's objection will be  
14 sustained. Counsel for the trustee may submit an appropriate  
15 form of order.

16 DATED: July 18, 2006



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18  
19 WHITNEY RIMEL, Judge  
20 United States Bankruptcy Court  
21  
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23  
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27  
28

## 1 PROOF OF SERVICE BY MAIL

2 STATE OF CALIFORNIA )  
3 COUNTY OF FRESNO ) ss.

4 I am a citizen of the United States and a resident of the  
5 county aforesaid; I am over the age of eighteen years and not a  
6 party to the within above-entitled action; my business address is  
7 2656 U.S. Courthouse, 1130 O Street, Fresno, California, 93721.

8 On July 18, 2006, I served the within document on the interested  
9 parties in said action by placing a true copy thereof enclosed in  
10 a sealed envelope with postage thereon fully prepaid, in the  
11 United States mail at Fresno, California, addressed as follows:

12 T. Scott Belden, Esq.  
KLEIN, DENATALE, GOLDNER, COOPER,  
13 ROSENLIEB & KIMBALL  
4550 California Ave., Floor 2  
14 P. O. Box 11172  
15 Bakersfield, California 93389-1172

16 Frank P. Samples, Esq.  
1331 L Street  
17 Bakersfield, California 93301

18 I certify (or declare), under penalty of perjury, that the  
19 foregoing is true and correct. Executed on July 18, 2006, at  
20 Fresno, California.

21   
22 Kathy Torres, AALS